



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2013-0145; FRL-9951-30-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Revisions to Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of State Implementation Plan (SIP) revisions submitted by the State of North Dakota on January 28, 2013 and April 22, 2014. The revisions are to Article 33-15 “Air Pollution Control” rules of the North Dakota Administrative Code. The revisions include amendments to update the Prevention of Significant Deterioration (PSD) rules and the definition of “volatile organic compounds”; to add particulate matter less than 2.5 microns in diameter (PM_{2.5}) methods of measurement; to modify the PM_{2.5} state ambient air quality standard, permissible open burning rule, and permit fee processes; and, to remove permitting fees for sources that operate an air monitoring site. The revisions also make clarifying changes. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2013-0145 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once

submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street,
Denver, Colorado 80202-1129, (303) 312-6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.
2. Tips for preparing your comments. When submitting comments, remember to:
 - Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register, date, and page number);
 - Follow directions and organize your comments;
 - Explain why you agree or disagree;
 - Suggest alternatives and substitute language for your requested changes;
 - Describe any assumptions and provide any technical information and/or data that you used;

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. On January 28, 2013, the State of North Dakota submitted a SIP revision containing amendments to Article 33-15 Air Pollution Control rules. The amendments: update the PSD rules; add PM_{2.5} methods of measurement; revise permit fee processing; remove permitting fees for sources that operate an air monitoring site; and make clarifying changes. The North Dakota State Health Council adopted the amendments on August 14, 2012 (effective January 1, 2013).

B. On April 22, 2014, the State of North Dakota submitted a SIP revision containing amendments to Article 33-15 Air Pollution Control rules. The amendments: update the PSD rules and the definition of “volatile organic compounds”; revise the PM_{2.5} state ambient air quality standard and permissible open burning rule; and clarify excess emissions reporting requirements. The North Dakota State Health Council adopted the amendments on February 11, 2014 (effective April 1, 2014).

III. The EPA’s Review of the State of North Dakota’s January 28, 2013 and April 22, 2014 Submittals

We evaluated North Dakota's January 28, 2013 and April 22, 2014 submittals regarding revisions to the State's Air Pollution Control rules. We propose to approve some of the revisions and not act on other revisions.

A. January 28, 2013 SIP Submittal

The State's January 28, 2013 SIP submittal includes the following types of amendments to the State's air quality rules: revisions to update State-specific additions to the incorporation by reference of the PSD rules; revisions to add PM_{2.5} methods of measurement; revisions to remove permitting fees for sources that operate an air monitoring site; and a revision to streamline the administrative fee process. The revisions also make clarifying changes.

The January 2013 submittal adds a sentence to 33-15-01-13.3, "[t]he provisions of this subsection do not apply to sources that are subject to monitoring requirements in chapter 33-15-21," to clarify that the alternative monitoring requirements in this rule do not apply to sources that are required to comply with the acid rain rules and exempts sources subject to acid rain requirements in chapter 33-15-21, Acid Rain Program, from the continuous emission monitoring system (CEMS) failures requirements found in 33-15-01-13.3 of the General Provisions chapter. Instead, 33-15-21-09.1 requires that CEMS monitoring, recordkeeping, and reporting requirements found in 40 CFR part 75 and its appendices apply to sources subject to acid rain requirements. This revision is for clarification purposes, and we propose to approve it. Likewise, we propose to approve the State's revisions to 33-15-05-04.3 that indicate PM_{2.5} measurements must be made in accordance with 40 CFR 51, Appendix M, Recommended Test Methods for State Implementation Plans and clarifies the definition of PM₁₀ determinations under the same method.

The State revised section 33-15-14-02.13.c(4) by deleting “or are subject to a standard under chapter 33-15-22,” to clarify that sources subject to the national emission standards for hazardous air pollutants (40 CFR part 63) in chapter 33-15-22, Emissions Standards for Hazardous Air Pollutants for Source Categories, do not need a permit to construct if they meet the exemption requirements found in 33-15-14-02.13. The State requested this revision to clarify that sources at minor facilities do not require a permit. Since the North Dakota SIP already exempts engine sources whose emissions are below certain thresholds (see 33-15-14-02.13(c)(1), (2), (3)) and also requires major hazardous air pollutant sources subject to maximum achievable control technology (MACT) to obtain a permit (see 33-15-22), we agree that this revision is for clarification purposes and propose to approve it.

The State makes a number of revisions in their January 28, 2013 submittal to their PSD rules found in chapter 33-15-15; some of the revisions we approved in prior actions, while other revisions were superseded by subsequent SIP submittals. First, the State updates the incorporation by reference date in 33-15-15-01.2 for 40 CFR 52.21, paragraphs (a)(2) through (e), (h) through (r), (v), (w), (aa) and (bb) to as they exist on January 1, 2012. We acted on the approval of incorporating 40 CFR 52.21(b)(14)(i) through (iii); (b)(15)(i) and (ii); and paragraph (c) pertaining to major and minor source baseline dates and ambient air increments in our July 30, 2013 final rule (78 FR 45866) approving the State’s demonstration that the North Dakota SIP meets the infrastructure requirements of the CAA for the National Ambient Air Quality Standards (NAAQS) promulgated for PM_{2.5} on July 18, 1997 and on October 17, 2006. In doing so, paragraphs (b)(14)(i) through (iii); (b)(15)(i) and (ii); and paragraph (c) were added to 40 CFR 52.1829 as paragraphs (c) and (d). We are proposing to not act on incorporating the

remainder of 40 CFR 52.21 as they exist on January 1, 2012, because this revision is superseded by the revision in the State's April 22, 2014 submittal to incorporate the same portions of 40 CFR 52.21 as they existed on July 1, 2013.

There are additional revisions in the State's January 28, 2013 PSD rules in 33-15-15-01.2. that we propose to approve. First, the State relocates 40 CFR 52.21(b)(50)(i)(c) and (b)(50)(i)(d) to correct numerical order. Second, the State revises 40 CFR 52.21(d) consistent with the federal rule at the same citation by changing "[n]o concentration of a contaminant shall exceed the ambient air quality standards in chapter 33-15-02 for these areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States" to "[n]o concentration of a contaminant shall exceed: (1) The concentration permitted under the national primary and secondary ambient air quality standards. (2) The concentration permitted by the ambient air quality standards in chapter 33-15-02." Third, the State revises 40 CFR 52.21(k)(1) consistent with the federal regulations at 40 CFR 52.21(k)(1)(i) by changing "[a]ny ambient air quality standard in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States; or" to "[a]ny national ambient air quality standard or any standard in chapter 33-15-02." The State recognizes their current regulations inadvertently do not include (i) after 40 CFR 52.21(k)(1) and will revise the language to read 40 CFR 52.21(k)(1)(i) in a future submittal¹. Fourth, the State also revised 40 CFR 52.21(v)(2)(iv)(a) consistent with the federal rule at the same citation by adding "national ambient air quality standard or any" and deleting "regulation

¹ Refer to docket #EPA-R08-OAR-2013-0145 for documentation.

under this article and the national ambient air quality standards in all other areas of the United States.” We propose to approve all of these changes.

We also propose to approve in the January 28, 2013 submittal revisions to chapter 33-15-23, Fees, allowing billing statements to be sent to applicants before final determinations have been made (33-15-23-02.2.c) and removing the permit fee for sources that operate an air monitoring site (33-15-23-03.1). CAA section 110(a)(2)(E) requires that a state implementation plan provide assurances that the state will have, among other items, adequate funding to carry out the implementation plan. Sending billing statements earlier than currently required under the SIP impacts the timing of when the fees are billed and collected. Therefore, it is appropriate to propose to approve because the change impacts the timing. The deletion of the criteria that describe this category is approvable because under 33-15-23-03.2 North Dakota will continue to charge fees to sources based on actual costs incurred by the State for the following: (1) observation of source or performance specification testing; and (2) audits of source operated ambient air monitoring networks.

In this submittal, the State also made clarifying revisions to three other SIP provisions. First, the State modified the abbreviation of PM₁₀ (33-15-01-05) by adding the phrase “less than or equal” and deleting the less than or equal to symbol. Second, the State moved and modified language related to agricultural practices and fugitive emissions from chapter 33-15-17 Restriction of Fugitive Emission to chapter 33-15-03 Restriction of Emissions of Visible Air Contaminants (the State deleted from 33-15-17-02.6 “[a]gricultural activities related to the normal operations of a farm shall be exempt from the requirements of this section. However, agricultural practices such as tilling of land, application of fertilizers, and the harvesting of crops

shall be managed in such a manner as to minimize dust from becoming airborne,” and then added the following sentence to 33-15-03-04.5 “[h]owever, agricultural practices such as tilling of land, application of fertilizers, harvesting of crops, and other activities shall be managed in such a manner as to minimize dust from becoming airborne”). In doing this the State modified the existing SIP by removing the exemption and requirement related to agricultural activities and fugitive dust under chapter 33-15-17, Restriction of Fugitive Emissions, and adding the same requirement related to agricultural activities and fugitive dust to chapter 33-15-03, Restriction of Emission of Visible Air Contaminants. We view these changes as non-substantive, SIP-strengthening, and clarifying because it removes an exemption and moves a requirement to a related area in the SIP. Third, the State inserted a reference to the exceptions found in 33-15-03-04 to the restrictions on the emission of visible air contaminants in chapter 33-15-03 Restriction of Emissions of Visible Air Contaminants into 33-15-17-02.4, which has the effect of referring the reader to exceptions already located within another chapter of the State’s rules, which we characterize as a clarifying revision. We propose to approve all of these as clarifying, SIP-strengthening, and non-substantive revisions.

Finally, we are not acting on the revision to 33-15-01-04 as this revision to the incorporation by reference date is superseded by a revision in the April 2014 submittal. We are also not acting on revisions to 33-15-03-04.4 and 33-15-05-01.2a(1) to remove improper exemptions from emissions limitations as we acted on these previously (79 FR 63045). We will act on revisions to 33-15-14-02.1, 33-15-14-02.5.a and 33-15-15-01-.2 in a future rulemaking and thus are not acting on these revisions at this time.

B. April 22, 2014 SIP Submittal

The State's April 22, 2014 SIP submittal includes the following types of amendments to the State's air quality rules: revisions to update the dates of incorporation by reference of the (1) PSD rules, and (2) the definition of "volatile organic compounds"; revisions to lower the PM_{2.5} State ambient air quality standard; revisions to clarify the permissible open burning rule; a revision that clarifies that the required excess emissions reporting requirements are for sources that operate continuous emission monitors; and a revision that removes a category of fees.

The CAA requires the regulation of volatile organic compounds (VOCs) for various purposes. For example, tropospheric ozone, commonly known as smog, is formed when VOC and nitrogen oxides (NO_x) react in the atmosphere in the presence of sunlight. Thus, because of the harmful health effects of ozone, the EPA and state governments limit the amount of VOC - organic compounds of carbon - that can be released into the atmosphere. Section 302(s) of the CAA specifies that the EPA has the authority to define the meaning of "VOC," and hence what compounds shall be treated as VOC for regulatory purposes. The EPA defines VOCs at 40 CFR 51.100(s) and VOC exclusions, determined to have negligible photochemical reactivity, at 51.100(s)(1). In its January 2013 submittal, the State updates 33-15-01-04, Definitions, to include the incorporation by reference of 40 CFR 51.100(s) as it exists on January 1, 2012. Subsequently, in its April 2014 submittal, the State updates 33-15-01-04, Definitions, again to include the incorporation by reference of 40 CFR 51.100(s) as it exists on July 1, 2013. The April 2014 submittal supersedes the January 2013 submittal, thus we are proposing to approve the April 2014 revision because it incorporates by reference the EPA's rule provisions.

The CAA also requires the EPA to set National Ambient Air Quality Standards (40 CFR part 50) for pollutants considered harmful to public health and the environment and identifies

two types of national ambient air quality standards: Primary standards provide public health protection, including protecting the health of "sensitive" populations such as asthmatics, children, and the elderly; and Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. In 2012 (78 FR 3086), the EPA revised the primary (health-based) annual PM_{2.5} standard by lowering the level from 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 12.0 $\mu\text{g}/\text{m}^3$ so as to provide increased protection against health effects associated with long- and short-term exposures (including premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease). Accordingly, the State's April 2014 submittal revises the PM_{2.5} primary standard in Table 1. Ambient Air Quality Standards of chapter 33-15-02 from 15.0 $\mu\text{g}/\text{m}^3$ to match the federal standard of 12.0 $\mu\text{g}/\text{m}^3$. We propose to approve this revision because it is consistent with the federal standard.

In addition, we propose to approve revisions in the April 2014 submittal that revise 33-15-04-02.2.a to require that any type of permissible burning listed in 33-15-04-02.1 will not create "air pollution" as defined by the State in 33-15-04 (33-15-04-02.2.a); and to delete the existing SIP requirement in 33-15-04-02.2.a (73 FR 30308), that prohibited permissible burning listed in 33-15-04-02.1 from creating a public nuisance ("No public nuisance is or will be created"). We propose to approve these revisions because they strengthen the SIP by prohibiting open burning that creates air pollution where "one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property or animal or plant life, or which unreasonably interferes with the enjoyment of life or property."

We also propose to approve the clarification to the applicability of excess emissions reporting and recordkeeping requirements for continuous emission monitoring requirements (33-15-06-05.1). We propose to approve this revision because it clarifies the existing SIP provision (58 FR 54041) and explains that the emission monitoring requirements referenced in 33-15-06-05.1 are those performed for continuous emission monitoring (adding the phrase “in accordance with section 33-15-06-04”).

In the April 2014 submittal, the State also revised the incorporation by reference date of 40 CFR 52.21 into the state regulations to July 1, 2013 (33-15-15-01.2). As previously discussed in III.A., we approved the incorporation of 40 CFR 52.21(b)(14)(i) through (iii); (b)(15)(i) and (ii); and paragraph (c) pertaining to major and minor source baseline dates and ambient air increments in our July 30, 2013 final rule (78 FR 45866) by adding paragraphs (c) and (d) to 40 CFR 52.1829. We propose to approve the State’s revision of the incorporation by reference date to July 1, 2013 because it references our regulations, and in doing so, propose to delete paragraphs (c) and (d) in 40 CFR 52.1829 as they would no longer be needed and would be duplicative if retained. The State also added the reference to “title” before the federal regulation citation in this section (first paragraph), and as this is for clarification purposes, we propose to approve this addition.

We are proposing to approve the State’s deletion of the criteria for the “Monitor” category (33-15-23-03.01) from the SIP. These criteria explain the “Monitor” fee is a charge that applies to minor sources that is “in addition to the annual fee for any source operating a continuous emission monitor system (CEMS) or an ambient monitoring site.” The State’s

January 2013 SIP submittal indicates that this fee is no longer being charged.² Thus, removal of the “Monitor” category corresponds to the State’s revision in their January 2013 submittal (removing the annual fee for minor sources that operate an emission monitor or ambient air quality monitoring site), which we propose to approve in section III.A.

Finally, we are not acting on the State’s revision to 33-15-03-05 and will instead take action on this revision in a future rulemaking.

IV. What Action is the EPA Taking?

For the reasons expressed in III.A. and III.B., the EPA is proposing to approve the following revisions, shown in Table 1, to the State’s Air Pollution Control rules. We are also proposing to not act on several other revisions, shown in Table 2, for the reasons discussed in III.A. and III.B. and summarized below.

Table 1 - List of North Dakota Revisions that the EPA is Proposing to Approve

Revised Sections in January 28, 2013 and April 22, 2014 Submissions Proposed for Approval
<u>January 28, 2013 submittal:</u> 33-15-01-05; 33-15-01-13.3; 33-15-03-04.5; 33-15-05-04.3; 33-15-14-02.13.c(4); 33-15-15-01.2 [†] ; 33-15-17-02.4; 33-15-17-02.6; 33-15-23-02.2.c; 33-15-23-03.1
<u>April 22, 2014 submittal:</u> 33-15-01-04; 33-15-02, Table 1.; 33-15-04-02.2.a; 33-15-06-05.1; 33-15-15-01.2; 33-15-23-03

[†] Except for the incorporation by reference date in the first paragraph and the revision associated with 40 CFR 52.21(l)(1)

Table 2 - List of North Dakota Revisions that the EPA is Proposing to Take No Action On

² April 2014 State SIP Submittal, PDF page 14.

Revised Section	Revision superseded by April 22, 2014 submittal	Revision acted on in 79 FR 63045	Revision will be acted on in a future submittal
Revised Sections in January 28, 2013 Submission Proposed for No Action			
33-15-01-04	x		
33-15-03-04.4		x	
33-15-05-01.2a(1)		x	
33-15-14-02.1			x
33-15-14-02.5.a			x
33-15-15-01.2 [‡]	x		
33-15-15-01.2 [§]			x
Revised Section in April 22, 2014 Submission Proposed for No Action			
33-15-03-05			x

[‡] Only the revision to the incorporation by reference date in the first paragraph

[§] Only the revision associated with 40 CFR 52.21(l)(1)

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference North Dakota Administrative Code as described in section IV. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VI. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian Country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq

Dated: August 11, 2016.

Debra H. Thomas,
Acting Regional Administrator,

Region 8.

[FR Doc. 2016-20320 Filed: 8/24/2016 8:45 am; Publication Date: 8/25/2016]